IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 327 OF 2006

Bombay Mercantile Co-op
Bank Ltd., . .. Petitioners.

vs.

Anand Uttam
Ponde. .. Respondent.

Mr. P.K. Rele a/w R.P. Rele i/by Piyush Shah for petitioners.

Mr. Suresh Joshi a/w V.M. Parkar for respondent.

CORAM : S.U. KAMDAR, J.

DATE : 13th March, 2006.

P.C.:

. The present petition challenges the order passed by the Presiding Officer of the Central Government Labour Court No. 1 inter alia holding that the respondent is a workman and who is covered by the provisions of Section 33 c (2) of the Industrial Disputes Act, 1947. The learned counsel appearing for the petitioner has contended that the findings given by the Court in paras 12 and 13 are

liable to be quashed and set aside because he has not considered the material evidence which has been produced before the trial Court and he has not considered and analysed the said evidence before coming to a finding that the respondent is a workman and is not a supervisor and not carrying out managerial or supervisory duties. On a perusal of the order, I find that from para 7 to 11 of the impugned order, the learned trial Court has considered various judgments of the Apex Court and the judgment of this Court and after considering the aforesaid tests which are laid down by various judgments, the trial Court has considered the evidence and material in para 13 of the said judgment and held that on the basis of the available record the duty assigned to the respondent was not of a managerial or administrative in nature and he was definitely not carrying out supervisory work and administrative work and thus he is a workman. The learned counsel for the petitioner however, contends that it is necessary for the trial Court before coming to sch a finding to consider each and every material and evidence and analyse it for coming to the said finding. I am not inclined to accept the aforesaid contention. I am of the view that once the material before the trial Court has been considered and the finding is given in para 13 of the said order, it cannot be said that the said finding is perverse and/or requires interference in

writ jurisdiction under Article 226 of the Constitution of India. The learned counsel for the petitioner has also contended that even apart from the finding that the respondent employee was not carrying out supervisory work and was not discharging the material functions, still the tribunal must consider the evidence and managerial and come to a positive finding that he is a workman before holding that he is a workman under the provisions of the Industrial Disputes Act, 1947. I am of the opinion that once a finding is given that the present workman is not carrying out material and/or supervisory work on the basis of the material and evidence available and hold that in view of the fact that he is not carrying out supervisory work, he is a workman. Such finding cannot be interfered with under Article 226 of the Constitution of India. The petition fails and the same is dismissed accordingly. No order as to costs.